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REVIEWS

The Election of Senators. By GEORGE H. HAYNES, Ph.D. New York: Henry Holt & Co., 1906. xii+295.

A timely book, one that would have been timely several years ago and is likely to be for several years to come, is one on the election of United States Senators. In the first chapter of his book Dr. Haynes tells how the present system came to be adopted. Out of four methods proposed, it is interesting to note that James Wilson, who is just now enjoying a sort of recrudescence as a statesman, stood out boldly for election by the people. However, he was able to carry only one state, his own, for his proposition. In opposing this method, Gerry said that it "would leave no security to the [commercial] interest." He probably never dreamed how completely the Senate was to become subservient to the "interests."

Although Congress was given power to regulate the time and manner of electing senators, it did not do so for more than seventy-five years. The practice of concurrent votes in separate session, which was followed by most of the state legislatures during this time, often resulted in deadlocks, and several times caused vacancies in the representation. Finally, the election of senators by a rump legislature in Indiana, 1857, led to a bill for the regulation of such elections by federal law, though it did not find a place on the statute-books until 1866. It provides that, when a vacancy is about to occur, on the second Tuesday after meeting and organizing, the houses shall ballot, *viva voce*, in separate session for senator; that they shall meet in joint session the next day; "and if the same person shall have received a majority of all the votes in each house, or if either house shall have failed to take proceedings as required by this act, . . . the joint assembly shall then proceed to" elect. In case of failure to elect on the first ballot, the two houses must meet in joint assembly on each succeeding day, and ballot at least once until an election is secured, or until the end of the session. A majority of the votes cast in the joint assembly, a majority of the members elected to each house being present, shall elect.

The author does not seem to have thought the provisions of the act open to criticism. One would like to know the effect of the

vote in separate session? If the same person receives a majority in separate session, is he thereby elected? If so, why vote in joint assembly? If not, why vote in separate assembly?

If this system was intended to prevent deadlocks, it has signally failed to accomplish that end. From 1891 to 1905 there were forty-six cases of failure to elect on the first joint ballot, an average of three states for each year. The lowest number of days on which there was a joint assembly for joint balloting was three, in North Dakota; the highest one hundred and fourteen, in Delaware. In fourteen cases there was no election. During one entire Congress both of Delaware's senatorial seats remained vacant. Many elections on first ballot have been preceded by long and bitter contests in the party caucus. These embitter the legislators and unfit them for their proper work. In 1897 the Legislature of Oregon never succeeded in organizing. The constitution requires the presence of two-thirds of the members-elect. Foreseeing the probable results of a joint ballot for senator, more than one-third of the members of the lower house absented themselves to prevent organization.

Out of ten cases of investigation by the Senate for bribery, nine have occurred within the last fifteen years. However, the author does not attribute this to the operation of the present law, but rather to the system of election by legislatures. The ten cases do not include any of the defeated candidates. The rules of the Senate for investigation evidence a desire to palliate rather than condemn the corrupt use of money. To invalidate a claim to a seat it must be proved by legal evidence (1) that the claimant was personally guilty of corrupt practices, or (2) that corruption took place with his sanction, or (3) that a sufficient number of votes were corruptly changed to affect the result (57).

In a chapter on "The Personnel of the Senate" Dr. Haynes seeks to show that it has suffered a considerable decline. Very little argument is needed to convince the well-informed reader of this, but Dr. Haynes hardly marshals his proof in a manner convincing to one not acquainted with the facts. He classifies seventeen out of a possible ninety as representing the "best traditions of the Senate." One would like to know what proportion it took to create the "best traditions" in the days of the Senate's glory. Not necessarily a majority. Is not a great deal of our respect for that

body of the past due to the transcendent greatness of a few men, such as Webster, Clay, Calhoun, and a few others?

That the foregoing evils have produced widespread dissatisfaction with the present method of electing is evidenced by the demands for a change. During the first eighty years of the republic the movement was somewhat sporadic, only nine resolutions on the subject being introduced in Congress during that period. But of late years it has gained much in strength and persistency. Resolutions for popular elections have passed the House of Representatives by the necessary two-thirds vote in five different Congresses, in two of them without a division and never with more than fifty-one votes in the negative. The demand has been incorporated in the national platforms of the People's Party since 1892, and in those of the Democratic Party since 1900. In one way or another thirty-one state legislatures have signified their desire for a change. At least two other states have approved the movement by their attempts to put in practice popular election through the nominating primary, and single houses of several other states have signified their approval. Here is the necessary two-thirds of the states upon whose demand Congress is under obligation to call a constitutional convention; but still the Senate holds out. How long will it continue to do so? When the colonists felt oppressed, they appointed committees of correspondence to keep in touch with the different parts of the country and encourage one another to stand together for relief. In 1899 Pennsylvania initiated this method to secure the co-operation of the other states in making demand upon Congress for a convention. Other states have followed her example. While this review was being prepared, the Senatorial Amendment Convention met at Des Moines and took definite steps looking to the calling of a constitutional convention. Given time and persistence, and the cause will be won.

Meantime, in many of the states efforts are being made to nullify the constitutional method of choosing senators by various devices. In some states the parties have simply given their stamp of approval to particular candidates by formal nominations. In many cases now unanimous elections by the legislature have been preceded by heated campaigns in the primary. A few states have made legal provision for an expression of choice by the people. A few states have gone almost as far as it is possible to go in their

effort to make the popular choice binding on the legislature. Oregon is one of these. That her legislature had the temerity to disregard the plain mandate of the people is only added argument for removing such possibilities.

Such, in the main, are the facts brought out in the first half of Dr. Haynes's book. The greater part of the remainder is taken up with briefs and arguments for and against popular election of senators. These are fairly and clearly stated, though the author does not hesitate to reveal his sympathies for the affirmative. For his work in bringing before the public the results thus far accomplished Dr. Haynes is deserving of hearty thanks. An excellent service would be rendered the cause of popular election by putting a copy of the book in the hands of every United States senator. It is time for them to see the writing on the wall.

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The Legislative History of Naturalization in the United States from the Revolutionary War to 1861. By FRANK GEORGE FRANKLIN, Ph.D. Chicago: The University of Chicago Press, 1906. Pp. 308.

Because aliens and their descendants form so large a part of our population, a *Legislative History of Naturalization* is a not uninviting subject for a book. Dr. Franklin's book is an expansion of an article on the same subject which he published in the *Annual Report* of the American Historical Association, 1901; consequently one might expect a mature presentation.

The first chapter deals with citizenship in the Revolutionary Period; the second, with the action of the Convention of 1787 in regard to the subject of naturalization. Seven chapters are devoted to the several acts passed from 1790 to 1824, the last being preceded by one on "Expatriation." Then follow three chapters on "Native Americanism" as introductory to the act of 1855, and a final one on "The Know-Nothing Period."

During the Revolution the Continental Congress passed several resolutions and acts bearing upon citizenship. One of these attempted to define citizenship of the colonies (states). Perhaps the most significant act was the one requiring all officers to abjure allegiance to King George and swear allegiance to the United